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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.82 OF 2007

Smt.Indirabai Tanaji Sawant — Applicant
versus
Abdullah Majid Saheb Jendi since deceased by his LRs. — Respondent

Mr.Suresh Gole for applicant.
Mr.B.M.Salunke for respondent.

CORAM : A.S.OKA, J.

DATE : 24th April 2007

PC :

1. Heard learned counsel appearing for the parties. Advocate for the applicant states that the applicant is personally present in the Court.

2. The applicant is the defendant-tenant. The decree for possession under the provisions of the Bombay Rent Hotels and Lodging Houses Rates (Control) Act, 1947 (hereinafter referred to as "Bombay Rent Act") has been passed against the petitioner. The decree has been passed by the Courts below on the ground of arrears of rent and bona fide requirement of the respondents.

3. The submission of the learned advocate for the applicant is that the suit at the instance of the original plaintiffs was not maintainable. He submitted that the applicant has purchased the suit premises from one Shamina by a Deed of Conveyance dated 22nd October 1997. He submitted that the original plaintiff is claiming to be the purchaser of the property only from one of the sons of the original owner. He submitted that the suit filed by the original plaintiff was not maintainable. He submitted that the original plaintiff cannot be termed as a landlord. He, therefore, submitted that both the Courts below have committed an error by holding that the suit was maintainable at the instance of the original plaintiff. Without prejudice to the aforesaid contentions he submitted that the applicant is entitled to establish her title by filing a suit on title and the findings recorded by the Courts below should not come in way of the applicant in establishing her title.

4. The learned counsel appearing for the respondents supported the impugned judgments and orders and stated that no interference is called for.

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5. The name of the original plaintiff is one Abdul Majid Saheb Jendi. He claims to have purchased the building in which suit premises are situated by a registered conveyance dated 28th April 1998. It is an admitted position that one Mohamad Ali Kanji was the owner of the building in which suit premises are situated. The said Mohamad Ali Kanji was survived by his widow, three daughters including said Shamina and a son by name Mehboob Ali. The original plaintiff purchased the property from the said Mehboob Ali. Though a contention was raised by the applicant regarding the purchase of the property from the said Shamina, the Appellate Court found that the original conveyance was not produced by the applicant and that no plea was raised by the applicant in the written statement that she has purchased the suit premises from said Shamina under a Deed of Conveyance. As there was no plea raised by the applicant regarding her purchase of the suit premises on ownership basis and as the original conveyance was not produced and proved, the Appellate Court has rightly discarded the said case made out by the applicant. On the other hand, the original plaintiff established that he had purchased the property from the son

of the original owner. Thus, it is obvious that even going by the case of the applicant, the vendor of the original applicant was a co-owner who was entitled to file a suit for eviction. As stated above, the applicant could not establish that she has purchased the suit premises from one of the heirs of the original owner.

6. I find no error in the view taken by the Courts below as regards maintainability of the suit.

7. So far as ground of arrears of rent is concerned, there is hardly any dispute about the fact that the revision applicant was in arrears from 1st July 1993 and no advantage was taken by the applicant of the provisions of Bombay Rent Act by obtaining a relief against forfeiture. The applicant failed to deposit entire arrears of rent with 9% interest thereon with costs of the suit on or before the first date of hearing of the suit. Insofar as bona fide requirement is concerned, there is a concurrent finding of fact recorded by both the Courts below. There is also a finding recorded that the original plaintiff is entitled to a decree for possession on the ground of denial of title. Hence, no case is made out

for interference in revisional jurisdiction.

8. The learned counsel for the applicant prays that the decree for possession shall not be allowed to be executed as the applicant desires to obtain appropriate relief in a suit on title. In fact, he has tendered an undertaking of the applicant in which applicant has stated that she will not create third party interests and she will not part with possession. An apprehension is expressed that the findings recorded by the Courts below will come in way of the applicant in her suit on title. Section 29(A) of the Bombay Rent Act specifically provides that nothing contained in Section 28 or 29 shall be deemed to bar a party to a suit or appeal mentioned therein in which a question of title to premises arises and is determined, from suing in competent Court to establish his title to such premises. In view of the express statutory provision, no clarification is necessary.

9. Hence, I pass following order :-

(a) Revision Application is dismissed with no orders as to costs;

(b) Undertaking of the applicant tendered on record is accepted and is marked "X" for

identification;

(c) In view of the said undertaking, the decree for possession shall not be executed till 31st August 2007.

(A.S.OKA, J.)